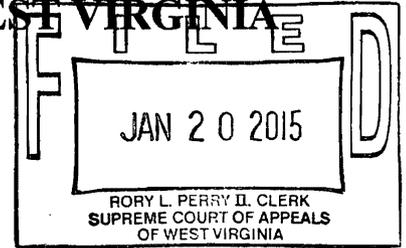


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 14-0764



**JUDY VANNOY AKERS,
(Defendant below)**

PETITIONER,

vs.)

**APPEAL FROM THE CIRCUIT COURT
OF KANAWHA COUNTY (10-C-746)**

**PATRICIA JONES (formerly Akers),
(Plaintiff below)**

RESPONDENT,

and

**WEST VIRGINIA CONSOLIDATED PUBLIC
RETIREMENT SYSTEM, a corporation, d/b/a
WEST VIRGINIA CONSOLIDATED PUBLIC
RETIREMENT BOARD,
(Defendant below)**

RESPONDENT.

SUMMARY RESPONSE
of
Respondent Patricia Jones (formerly Akers)

Counsel for Respondent, Patricia Jones (formerly Akers)

**ANTHONY R. VENERI, ESQ.
VENERI LAW OFFICES
1600 West Main Street
Princeton, WV 24740
WV State Bar No.: 4310
Telephone: (304) 425-8751
venerilawoffices@frontiernet.net**

SUMMARY RESPONSE OF PATRICIA AKERS JONES

Judy Vannoy Akers has appealed the decision of the Circuit Court of Kanawha County, West Virginia to enter judgment in favor of the Consolidated Public Retirement Board [hereinafter referred to as “Board”] to pay survivor annuity benefits pursuant to the disability retirement statute, West Virginia Code 5-10-25, instead of paying the survivor annuity benefits as a preretirement death annuity pursuant to West Virginia Code 5-10-27. It is apparent from her statement of the case and argument that Judy Vannoy Akers believes that if the survivor annuity is paid pursuant to the preretirement death annuities statute, she would be entitled to all such benefits even if an enforceable qualified domestic relations order had been entered designating Patricia Akers Jones as the surviving spouse for purposes of survivor annuity benefits.

Although the reply brief of Patricia Akers Jones to the response of Judy Vannoy Akers in appeal docket number 14-0734 presents much of the argument below, the appeal of Judy Vannoy Akers is a separate appeal (docket number 14-0764) and the argument is again summarized to demonstrate that Patricia Akers Jones is entitled to any survivor annuity benefits paid pursuant to the preretirement death annuities statute since a valid QDRO assigns those benefits as well.

A. A VALID QDRO ALLOCATES PRERETIREMENT DEATH ANNUITIES.

On pages 4, 5, and 6 of her brief, Judy Vannoy Akers quotes the testimony of Board former executive director, Ann Lambright, to the Circuit Court of Mercer County to support her argument that the preretirement death annuities statute, West Virginia Code 5-10-27(b), mandates that preretirement survivor annuity benefits be paid to a participant’s *actual surviving spouse* regardless of whether there has been a properly entered QDRO allocating survivor annuity benefits to the former spouse. Ms. Akers then argues for the enforcement of a survivor annuity paid pursuant to the preretirement death annuities statute starting at page 7 of her brief.

As a matter of law, both Ms. Lambright and Ms. Akers are in error because of the express provisions of West Virginia Code 5-10-46:

*“The right of any person to any benefit provided for in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court except that the benefits or contributions under this system shall be subject to “Qualified Domestic Relations Orders” as that term is defined in Section 414(p)(26 USCS Section 414(p)) of the Internal Revenue Code as applicable to government plans...” (West Virginia Code 5-10-46, *emphasis added*.)*

Survivor annuity benefits paid pursuant to the preretirement death annuities statute are benefits provided by the “Retirement System” pursuant to West Virginia Code 5-10-27. That statute refers to the annuity provisions of 5-10-24. QDRO’s *also* alienate preretirement benefits.

B. THE BOARD AGREES THAT A QDRO ASSIGNS PRERETIREMENT BENEFITS.

When presenting its motion for summary judgment to the Circuit Court of Kanawha County, the Board argued as follows in its memorandum of law:

*“Mrs. Akers’ Cross Claim suggests she misapprehends the importance of the type of benefit awarded. A pre-retirement death benefit would have, in this case, resulted in her receiving a slightly higher monthly annuity; however, it would not in any way impact the dispute regarding QDRO brought by Ms. Jones. Pursuant to W.Va. Code R. §162-1-6, a QDRO can apply to the interest of not only a member or retirant in PERS, but also a beneficiary. Moreover, there is no exclusion of pre-retirement death benefits from the QDRO rules. *Id.* Therefore, in terms of the claims brought by the Petitioner, it makes no difference whether the Board ultimately treated Mr. Akers’ death as pre-or post-retirement.” (App 432, *Emphasis added*.)*

C. MR. AKERS ASSIGNED THE PRERETIREMENT BENEFITS IN THE DIVORCE.

The fact that Mr. Akers signed the preretirement benefit form on June 4, 2009, proves he intended to give the preretirement benefits to Ms. Jones. (App 135) Nevertheless, the final divorce order makes it clear: Danny Akers granted Patricia Akers Jones all of the survivor annuity benefits available under the retirement plans:

“d.)The Petitioner shall receive the use, possession, and ownership of her retirement (the IRA), and one half (50%) of the Respondent's retirement assets accumulated as of the date of separation (defined benefit plan(s), 401k plan(s), and others, but not the credit union account) *and the Petitioner shall receive and be entitled to all survivor benefits, surviving spouse benefits, death benefits, survivor annuities, and the like available under the retirement plans. The Respondent shall ensure that the Petitioner is named as the beneficiary of all survivor benefits, surviving spouse benefits, death benefits, survivor annuity benefits, and the like, and he shall provide her with the proof of same.* A QDRO(s) shall be prepared by counsel for the Petitioner...”
(Final Divorce Order, App 110, *emphasis added*)

The granting of all survivor annuity benefits (preretirement and post-retirement) to Patricia Akers Jones in the agreed final divorce order was a property right that was not subject to modification. Segal v. Beard, 181 W.Va. 92, 380 S.E.2d 444 (1989).

D. IF EITHER QDRO IS ENFORCEABLE, THE AKERS' APPEAL IS MOOT.

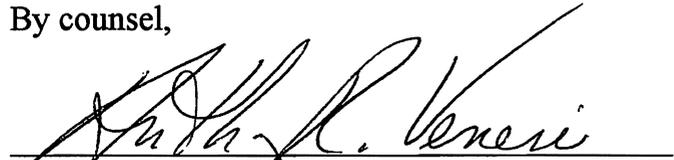
Patricia Akers Jones takes no position with regard to whether the survivor annuity should be paid under the disability retirement statute or the preretirement death annuities statute. However, given the significant sums already paid to Ms. Akers, if this Court enforces either QDRO, Ms. Akers' appeal will be rendered moot since all survivor annuity benefits should be paid to Patricia Akers Jones.

CONCLUSION

If this Court enforces either the June 4, 2009, QDRO or the December 9, 2010 QDRO, then Patricia Akers Jones should receive all of the survivor annuity payments paid by the Retirement System since she is specifically designated as the surviving spouse in paragraph 7(b) of both QDROs. The relief requested by Judy Vannoy Akers should be denied.

PATRICIA AKERS JONES

By counsel,


Counsel for the Respondent

ANTHONY R. VENERI, ESQ.
VENERI LAW OFFICES
1600 West Main Street
Princeton, W.Va. 24740
W.Va. State Bar No. 4310
Telephone: (304) 425-8751
E-Mail: venerilawoffices@frontiernet.net

CERTIFICATE OF SERVICE

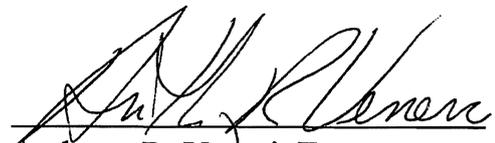
I, **ANTHONY R. VENERI, ESQ.**, counsel for Respondent Patricia Jones (formerly Akers), do hereby certify that I have this day served a true copy of the foregoing **SUMMARY RESPONSE OF THE RESPONDENT** upon **LENNA R. CHAMBERS, ESQ.**, counsel for the West Virginia Consolidated Public Retirement Board and upon **RANDAL R. ROAHRIG, ESQ.**, counsel for Judy Vannoy Akers, by placing same in the United State Mail, postage prepaid addressed as follows::

**LENNA R. CHAMBERS, ESQ.
BOWLES RICE McDAVID GRAFF & LOVE, LLP
P.O. BOX 1386
600 QUARRIER STREET
CHARLESTON, WV 25325**

**RANDAL W. ROAHRIG, ESQ.
THE ROAHRIG LAW FIRM
1512 PRINCETON AVENUE
PRINCETON, WV 24740**

Dated this 16th day of January, 2015.

Signed:


Anthony R. Veneri, Esq.
Counsel for the Petitioner
WV State Bar No.: 4310

Counsel for Respondent
ANTHONY R. VENERI, ESQ.
VENERI LAW OFFICES
1600 West Main Street
Princeton, WV 24740
WV State Bar No.: 4310
Telephone:(304)425-8751
venerilawoffices@frontiernet.net